



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
KINDER MORGAN SOUTHEAST TERMINALS LLC
FOR
KINDER MORGAN RICHMOND TERMINAL I
Registration No. 50258**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Kinder Morgan Southeast Terminals LLC, regarding the Kinder Morgan Southeast Terminals Richmond Terminal, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "AST" means fixed roof above ground storage tanks equipped with an internal floating roof for storage of gasoline and/or ethanol products. The above ground storage tanks are subject to 40 CFR Part 60, Subpart Kb.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

6. "Facility" means the Kinder Morgan Southeast Terminals LLC Richmond Terminal, located at 2000 Trenton Avenue, Richmond, Virginia, 23234.
7. "IFR" means internal floating roof.
8. "Kinder Morgan" means Kinder Morgan Southeast Terminals LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Kinder Morgan is a "person" within the meaning of Va. Code § 10.1-1300.
9. "MACT" means maximum achievable control technology.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
12. "Permit" means a Title V federal operating permit to operate a petroleum bulk terminal, which was issued under the Virginia Air Pollution Control Law and the Regulations to Kinder Morgan on November 17, 2009, and renewed on May 8, 2015.
13. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
17. "VOC" means volatile organic compound.

SECTION C: Findings of Fact and Conclusions of Law

1. Kinder Morgan owns and operates the Facility in Richmond, Virginia. The Facility is the subject of the Permit which allows Kinder Morgan to operate a bulk fuels storage/distribution facility.
2. On January 27, 2017, Kinder Morgan submitted to DEQ a 2016 Semi-annual National Emissions Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, 40 CFR Part 63, Subpart BBBB Report for the Facility. The report stated that ASTs T-4, T-12, and T-17 were taken out of service for maintenance on December 1, 2015, November 1, 2012, and December 1, 2009, respectively. After the maintenance of the ASTs, Kinder Morgan did not reset the maintenance leg setting of the IFR support systems to operational positions resulting in off float conditions (reported as 1

for Tank T-4, 12 for Tank T-12, and 140 for Tank T-17). Kinder Morgan reported that there were no exceedances of VOC emission limits resulting from off float events and indicated the IFRs were returned to the required operational setting on January 23, 2017 for Tank T-4, December 13, 2016 for Tank T-12, and November 9, 2016 for Tank T-17.

3. Condition 2 of the Permit requires (for Tanks T-01 through T-22) that each internal floating roof shall be floating on the liquid surface at all times, except during initial fill and during those intervals when the storage vessel is completely emptied or subsequently emptied and refilled.
4. On April 18, 2017, based on staff review of the report, the Department issued NOV No. APRO000608-001 to Kinder Morgan for the violations described in paragraph C(2) above.
5. Department staff met with representatives of Kinder Morgan to discuss the violations on May 16 and July 19, 2017. In addition, Kinder Morgan submitted revised information regarding the reported violations on June 7, 2017, indicating the off float conditions only occurred on Tank T-17 and that there were 18 off float events.
6. Based on the Department's review of the report and additional information submitted in response to the NOV, the Board concludes that Kinder Morgan violated Permit Condition 2, as described above.
7. Kinder Morgan has submitted documentation that verifies that the violations described above have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Kinder Morgan, and Kinder Morgan agrees to:

1. Pay a civil charge of \$34,125.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Kinder Morgan shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the

Department of Law, Kinder Morgan shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Kinder Morgan, for good cause shown by Kinder Morgan, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Kinder Morgan admits the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Kinder Morgan consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Kinder Morgan declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Kinder Morgan to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Kinder Morgan shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Kinder Morgan shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Kinder Morgan shall notify the DEQ Regional Director verbally

within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the Kinder Morgan intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

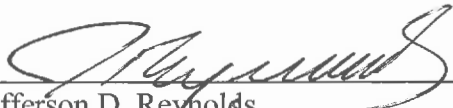
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Kinder Morgan. Nevertheless, Kinder Morgan agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Kinder Morgan petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Kinder Morgan.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Kinder Morgan from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Kinder Morgan and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Kinder Morgan certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Kinder Morgan to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Kinder Morgan.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Kinder Morgan voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1 day of February, 2018.



Jefferson D. Reynolds
Director, Division of Enforcement
Department of Environmental Quality

Kinder Morgan Southeast Terminals LLC voluntarily agrees to the issuance of this Order.

Date: 1-26-18 By: Robert McKinley, Operations Manager
Robert McKinley (Person) (Title)
Kinder Morgan Southeast Terminals LLC

Commonwealth of Virginia

City/County of PETERSBURG

The foregoing document was signed and acknowledged before me this 26 day of

JANUARY, 2018, by ROBERT MCKINLEY who is

OPERATIONS MGR of Kinder Morgan Southeast Terminals LLC, on behalf of the company.

Linda England Jacob
Notary Public

312539

Registration No.

My commission expires: 09/30/21

Notary seal:

